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10/718,425	11/20/2003	Steven Ryals	BE1-0031US	9644

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EXAMINER

SHARP, JEFFREY ANDREW

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

[1] This action is responsive to Applicant's remarks/amendment filed on 17 January 2006 with regard to the Official Office action mailed on 28 October 2005.

Status of Claims

[2] Claims 9-17, and 23-32 are pending.

Drawings

[3] The drawings were previously objected for informalities. In view of Applicant's replacement sheet submitted on 17 January 2006, the objections to the drawings have not been withdrawn.

The originally filed drawings did not support the claim limitation "wherein the first foot portion has only one aperture therethrough". Applicant has successfully overcome this objection by changing Figure 4 to show *only one* aperture on the first foot portion 122 (left).

On the other hand, Figures 3 and 4 are currently objected to for the addition of three (3) new matter apertures located at the center of the retainer body. The figures also do not include reference numerals for the three apertures, and the apertures are not mentioned in the description as illustrated in detail. After further consideration, it appears that the originally filed drawings *did* support the limitation "at least three apertures through the interconnecting portion corresponding to and aligned with the apertures of the first and second foot portions", when construed broadly and in light of the disclosure. Therefore, the Examiner has withdrawn the previous objection to Figures 3 and 4 for not showing "at least three apertures through the

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interconnecting portion corresponding to and aligned with the apertures of the first and second foot portions". It is required that Applicant remove the three added circular "apertures" located on the retainer body in Figures 3 and 4, in order to avoid an issue of new matter.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

[4] The disclosure was previously objected to for informalities. Applicant has successfully addressed these issues in the amendment filed on 17 January 2006. Accordingly, the objection(s) to the specification have been withdrawn, and no new matter has been entered.

Claim Objections

[5] Claims 8, 13, and 25 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 17 January 2006. Accordingly, the objection to the claims has been withdrawn.

Response to Arguments/Remarks

[6] Claims 1-4 and 8 were previously rejected under 35 U.S.C. 102(b) as being anticipated by McAller et al. US-5,932,844;

Claims 1-5, 8-15, 17, and 23-25 were previously rejected under 35 U.S.C. 103(a) as being obvious over Vogel US-647,169 in view of Mandel et al. US-389,660 and Yamaguchi US-4,720,260;

Claims 6, 7, and 16 were previously rejected under 35 U.S.C. 103(a) as being obvious over Vogel US-647,169 in view of Mandel et al. US-389,660 and Yamaguchi US-4,720,260, and in further view of Whalen US-2,522,656;

Claims 1-4 and 8 were previously rejected under 35 U.S.C. 102(b) as being anticipated by Larsen US-5,314,160;

Claims 1, 3, 4, 6-17, and 23-25 were previously rejected under 35 U.S.C. 102(b) as being anticipated by or under or 35 U.S.C. 103(a) as being obvious over Odegaard US-3,341,651

Applicant's arguments/remarks with regard to this reference have been fully considered, but are moot in view of the following new grounds of rejection necessitated by amendment.

New Grounds of Rejection

Claim Rejections - 35 USC § 102

[7] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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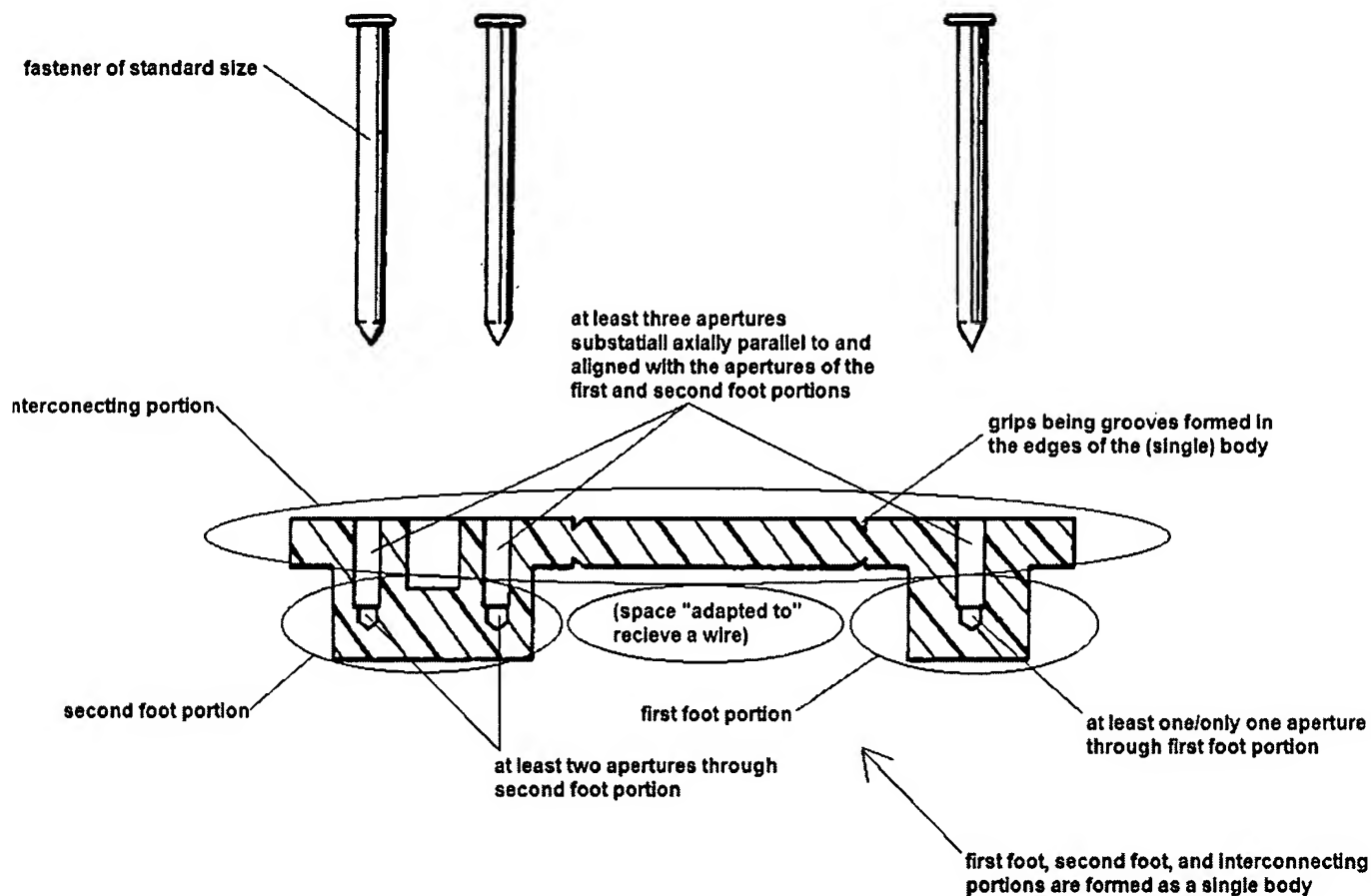
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[8] Claims 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Larsen US-5,314,160.

In short, Larsen teaches an apparatus having a body comprising a first foot portion (10) having at least one or only one aperture (38), a second foot portion (12) having at least two apertures (18, 20, 46), and an interconnecting portion (14, 23, 34, 54) that shares at least three apertures which are "axially parallel to and aligned with the apertures of the first (10) and second (12) foot portions"

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Larsen US-5,314,160

Claim Rejections - 35 USC § 103

[9] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

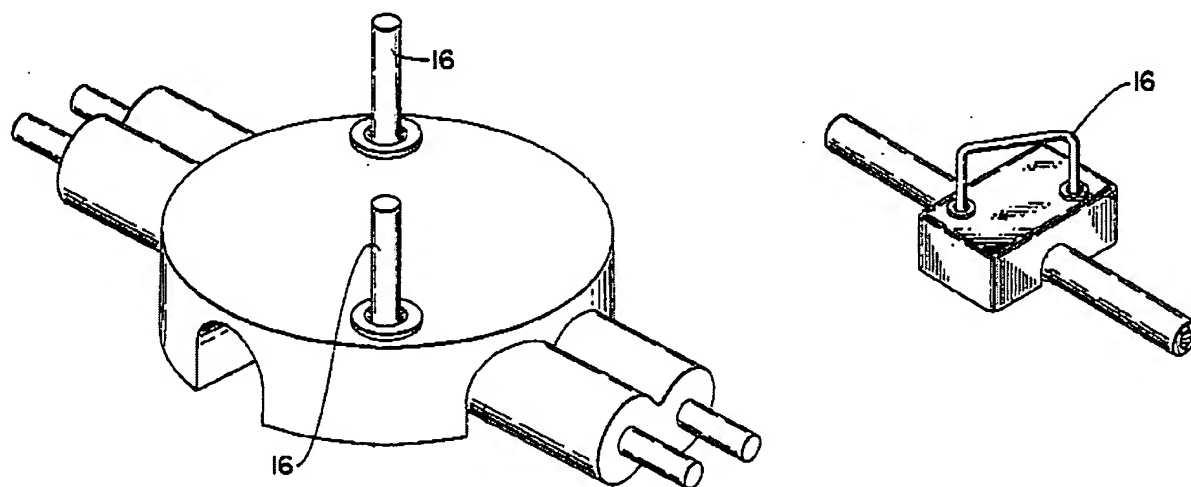
[10] Claims 17 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Larsen US-5,314,160 in view of Ruehl US-4,582,288.

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In short, Larsen teaches an apparatus having each and every limitation of claims 17 and 23-25 as discussed above, and broadly and openly states that the apertures are "complimentary to *fastening elements*, which *may* be case-hardened nails"; however, Larsen fails to disclose specifically, staples as the fastening element(s).

Ruehl suggests substituting nails for staples in an apparatus having two foot portions, an interconnecting portion, and a passage, said apparatus being adapted to receive and retain a wire.



Ruehl US-4,582,288

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art, to modify the at least one fastener taught by Larsen, to comprise a staple as suggested by Ruehl, since Ruehl establishes that a staple is an art-recognized equivalent to a nail, especially in wire protectors and retainers. Moreover, it would be advantageous to employ a staple over a nail, in order to reduce the number of working parts used to fasten the apparatus to the mounting structure.

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[11] Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsen US-5,314,160 in view of Albertson et. al. US-6,095,739.

In short, Larsen teaches an apparatus having each and every limitation of claim 16 as discussed above, including at least one fastener adapted to mount the apparatus to a mounting structure; however, Larsen fails to disclose specifically, the apparatus to have "identifying indicia comprising information relating to the at least one fastener".

Albertson et al. suggest placing "identifying indicia comprising information relating to the at least one fastener", in order to readily determine the size of the fastener.

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art, to modify the apparatus taught by Larsen, to comprise identifying indicia as suggested by Albertson et al., in order to relate information to a user, particularly information concerning the size of the at least one fastener.

[12] Claims 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsen US-5,314,160 in view of Ruehl US-4,582,288, and in further view of Kobylinski et al. US-2004/0126201.

In short, Larsen teaches a retainer comprising a polymeric body having each and every limitation of claims 26-32 as discussed above, and broadly and openly states that the apertures are "complimentary to *fastening elements*, which *may* be case-hardened nails"; however, Larsen fails to disclose specifically, a staple as the fastening element. Larsen also fails to expressly suggest "identifying indicia on the body relating fastener sizes to the apertures".

Ruehl suggests substituting nails for staples in an apparatus having two foot portions, an interconnecting portion, and a passage, said apparatus being adapted to receive and retain a wire. Note that Ruehl's staple extends over the wire, having one leg in a first foot portion and the other leg in a second foot portion for securing said retainer to a mounting structure.

Kobylinski et al. suggest placing "identifying indicia on the body relating fastener sizes to the apertures". The indicia on Kobylinski et al.'s retainer body ensures the correct size of the fastener(s), and identifies at least one of a size of the staple and a size of the retainer. The indicia suggested by Kobylinski et al. also indicates which gauge wire the retainer should be used with.

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art, to modify the at least one fastener taught by Larsen, to comprise a staple as suggested by Ruehl, since Ruehl establishes that a staple is an art-recognized equivalent to a nail, especially in wire protectors and retainers. Moreover, it would be advantageous to employ a staple over a nail, in order to reduce the number of working parts used to fasten the apparatus to the mounting structure.

It would have further been obvious to one of ordinary skill in the art, to modify the retainer taught by Larsen, to comprise identifying indicia as suggested by Kobylinski et al., in order to relate fastener sizes information to a user, ensure the correct size of the fastener(s), and/or to identify which type of wire to use with said retainer.

As for claim 27, Larsen clearly shows the first and second foot portions having a "thickness" greater than the interconnecting portion.

Conclusion

[13] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

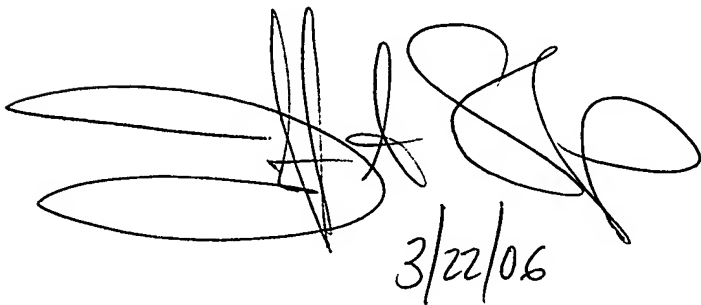
[14] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Sharp whose telephone number is (571) 272-7074. The examiner can normally be reached 7:00 am - 5:30 pm Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

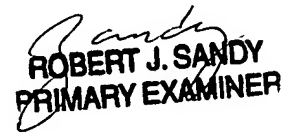
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JAS



Handwritten signature and date 3/22/06



Handwritten signature and stamp: ROBERT J. SANDY, PRIMARY EXAMINER